

1 MARY LOU ANDRADE  
2 Treasurer/Tax Collector/Public Administrator  
3 For the County of San Benito  
4 440 Fifth Street  
Courthouse, Room 107  
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6  
7 UNITED STATES BANKRUPTCY COURT  
8  
9 SOUTHERN DISTRICT OF NEW YORK

10 In re: ) CASE NO. 12-12020 (MG)  
11 RESIDENTIAL CAPITAL, LLC, et al., ) CHAPTER 11  
12 Debtors. )  
13 ) OPPOSITION TO MOTION FOR ORDER  
14 ) AUTHORIZING SALE OF CERTAIN DEBTOR ASSETS  
15 ) FREE AND CLEAR OF LIENS, CLAIMS,  
16 ) ENCUMBRANCES, AND OTHER INTERESTS AND  
17 ) GRANTING RELATED RELIEF  
18 )  
19 ) CREDITOR COUNTY OF SAN BENITO, CALIFORNIA

20 TO THE HONORABLE MARTIN GLENN AND TO ALL PARTIES OF INTEREST:

21 The COUNTY OF SAN BENITO, hereby submits its OPPOSITION TO MOTION FOR ORDER  
22 AUTHORIZING SALE OF REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND  
23 OTHER INTERESTS, AND SUBJECT TO HIGHER OR BETTER OFFERS. The sale motion was filed by  
24 Residential Capital LLC and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the  
25 "Company").

26 SAN BENITO respectfully requests that this court accept this filing, if untimely, and waive any timeliness deficiencies.  
27 SAN BENITO is a small county of 56,000 people. During the down turn of the economy San Benito has had to  
28 reduce staff in all departments including the Treasurer-Tax Collector-Public Administrator Offices. Addressing  
bankruptcy cases is the Treasurer-Tax Collector's sole responsibility without counsel assistance. It is imperative to  
know that police, fire, schools, and hospitals get their funding from property taxes. If we don't get our money, then we  
will not be able to fund these functions of local government. Additionally, the Treasurer-Tax Collector is solely  
responsible for the management of the three departments of local government with only four staff persons to execute  
the tremendous volume of duties. Consequently, certain obligations take priority at different times over others and we  
cannot be as timely as necessary, hence the request of SAN BENITO to waive any timeliness deficiencies.

1 SAN BENITO bases its Opposition on the following grounds;

2 1. SAN BENITO does not consent to the sale free and clear of liens because its secured personal property  
3 taxes will not be paid directly upon the sale of the assets;

4 2. Non-bankruptcy law prohibits the sale free and clear of the liens;

5 3. The secured personal property taxes are a lien on the property;

6 4. This Bankruptcy Court must look at state law to determine the taxes;

7 5. Secured real and personal property taxes are mandated by state law.

8 SAN BENITO respectfully requests that this court allow its secured personal property taxes in the full  
9 amount of \$4,557.94 for real personal property taxes.

10 SAN BENITO also requests that this court deny the Debtors' Motion for Sale of Assets Free and Clear of  
11 Liens and order that SAN BENITO'S real personal property taxes be paid in full directly upon the sale of the assets.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. PRELIMINARY STATEMENT**

15 The subject property is comprised of various locations within SAN BENITO County. The personal property  
16 is subject to the assessment of local property taxes by SAN BENITO under California State law.

17 The personal property has been subject to secured real personal property taxes mandated under California  
18 State law for the fiscal tax years of 2007-08, 2008-09, 2009-10, 2010-11, and 2011-2012.

19 **II. SAN BENITO OBJECTS TO SALE OF THE ASSETS FREE AND CLEAR OF LIENS**

20 The debtor may sell the property free and clear of any interest in such property of an entity other than the  
21 estate only if the applicable non-bankruptcy law permits sale of such property free and clear of such interest, such  
22 entity consents; such interest is a lien and the price at which such property is to be sold is greater than the aggregate  
value of all liens on such property.

23 SAN BENITO objects to the sale because its liens on the real personal property will not be paid directly upon  
24 the sale, in opposition to the dictates of California State law.

25 Additionally, non-bankruptcy law does not permit the sale of the property free and clear of liens as explained  
26 below.

27 California Revenue and Taxation Code Section 2192.1 states:

28 Every tax declared in this chapter to be a lien on real property. . .have the priority over all other liens on the  
property, regardless of the time of their creation. Any tax. . .described in the preceding sentence shall be  
given priority over matters including but not limited to any recognizance, deed, judgment, debt, obligation, or  
responsibility with respect to which the subject real property may become charged or liable.

29 California Revenue and Taxation Code Section 2192.2 states:

Upon the sale . . . conducted under judicial process or otherwise by any sheriff, constable, trustee, receiver, or other ministerial officer, of any real property upon which ad valorem property taxes . . . are due and unpaid at the time of sale, the proceeds from that shall, after the payment of necessary and incidental sale expenses, be first applied to the amount of those ad valorem property taxes . . . and be transmitted by the conducting officer to the office responsible for the collection of those taxes and assessments. Emphasis added. The Treasurer-Tax collector is the governmental agency that collects taxes.

Since SAN BENITO does not consent to the sale and non-bankruptcy law prohibits the sale of real property and personal property without payment of the ad valorem taxes the assets cannot be sold without direct payment of SAN BENITO'S taxes.

### III. THIS COURT MUST LOOK AT CALIFORNIA STATE LAW WHEN APPLYING WHEN DETERMINING TAX LIABILITY

It is well settled law that the bankruptcy court must apply California state law and California tax principles when determining the SAN BENITO tax liability.

#### IV. CONCLUSION

For all the foregoing reasons, SAN BENITO respectfully requests that this Court deny the Sale Motion and order that SAN BENITO'S real personal property taxes be paid in full directly upon the sale.

SAN BENITO would further request language in the order that directs payment of its tax liens directly from escrow and that SAN BENITO have the opportunity to review such language.

Dated: November 2, 2012.

Mary Lou Andrade  
Mary Lou Andrade  
Treasurer/Tax Collector/Public Administrator  
For the County of San Benito, Secured Creditor

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1 MARY LOU ANDRADE  
2 Treasurer/Tax Collector/Public Administrator  
3 For County of San Benito  
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5 Hollister, CA 95023-3894  
6 (831) 636-4034 / Fax (831) 636-4014



5 PROOF OF SERVICE BY MAIL

6 I, the undersigned, state that I am over the age of eighteen (18) years of age, not a  
7 party to this action, and I am employed in the county where the mailing took place. My  
8 business address is 440 Fifth Street, Room 107 (San Benito County Courthouse)  
Hollister, California 95023-3894. I served a copy of the following documents:

9  
10 **Opposition to Motion for Order Authorizing Sale of Certain Debtor Assets  
Free and Clear of Liens, Claims, Encumbrances, and Other Interests  
and Granting Related Relief**

11 by enclosing them in an envelope and depositing the sealed envelope with the United  
12 States Postal Service with the postage fully prepaid. The envelope was addressed and  
13 mailed to each party listed below.

14 Morrison & Foerster LLP  
15 Gary S. Lee and Alexandra Barrage  
16 1290 Avenue of the Americas  
17 New York, NY 10104

18 Sidley Austin LLP  
19 Larry Nyhan and Jessica Boelter  
20 One South Dearborn  
Chicago, IL 60603

21 Kirkland & Ellis LLP  
22 Ray Schrock, Richard Cieri and Stephen Hessler  
23 601 Lexington Avenue  
24 New York, NY 10022

25 Kramer Levin Naftalis & Frankel LLP  
26 Kenneth Eckstein and Douglas Mannal  
1177 Avenue of the Americas  
27 New York, NY 10036

28 Munger, Tolles & Olsen LLP  
Seth Goldman and Thomas Walper  
355 South Grand Ave.  
Los Angeles, CA 90071

Office of the United States Trustee  
Southern District of New York  
Brian Masumoto  
33 Whitehall Street, 21<sup>st</sup> Floor  
New York, NY 10004

22 Date mailed: 11/05/2012  
23 Place of mailing: Hollister, California

24 I declare, under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

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26  
27  
28   
KATHERINE CASEY  
Deputy Treasurer